REMARKS

Response to Restriction Requirement

Election

In response to the Restriction Requirement mailed September 1, 2006, Applicants provisionally elect with traverse the subject matter of Group I, claims 1-40, drawn to an MHC class I-restricted epitope peptide derived from survivin, composition thereof and kit comprising said peptide, and complex of peptide and HLA class I or fragment thereof, classified in Class 530, subclass 328, Class 424, subclass 185.1, Class 435, subclass 810, and Class 530, subclass 350, respectively.

Furthermore, Applicants provisionally elect with traverse the Sur93-101/T2 peptide (SEQ ID NO:36) as a single disclosed species of peptide that binds a specific class I MHC molecule as required by the Restriction Requirement with the election of Group I.

Additionally, Applicants provisionally elect with traverse the Sur20-28 peptide (SEQ ID NO:14) as a single disclosed species of second peptide to be used in combination with the first elected species of peptide in one of the compositions of claim 26 or 27, as required by the Restriction Requirement with the election of Group I.

Applicants further note that claims 26 and 27 are amended herein. Particularly, claim 26 still further limits claim 1 but now recites that the composition contains a native peptide present in native human survivin and contains another modified survivin peptide that differs from a peptide sequence present in a native survivin by the presence of at least one substitution, addition, or deletion amino acid modification. Additionally, claim 27 corresponds to and further limits claim 26 in that it requires that the composition of claim 26 contain a specific native human survivin peptide sequence (SEQ ID NO:14) and a specific modified survivin peptide (SEQ ID NO:36). These amendments fin support at least from the disclosure at page 13, lines 31-33; page 15, lines 20-23 and from the original claims which encompass compositions containing native and modified survivin peptides e.g., original claims 16 and 17 and claim 25.

Restriction Requirement

The restriction requirement subjected claims 101-114 to restriction under 35 U.S.C. § 121 between one of the following inventions:

> **(Group I)** Claim 1-40, drawn to an MHC class I-restricted epitope peptide derived from survivin, composition thereof and kit comprising said peptide, and complex of peptide and HLA class I or fragment thereof, classified in Class 530, subclass 328, Class 424, subclass 185.1, Class 435, subclass 810, and Class 530, subclass 350, respectively.
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> **(Group II)** Claim 41, drawn to a method of detecting in a cancer patient the presence of survivin reactive T cells, said method comprising contacting a tumor tissue or blood sample with a complex, classified in class 435, subclass 7.1;
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> **(Group III)** Claims 42 and 43, drawn to a molecule capable of specifically binding a peptide, classified in class 530, subclass 387.1;
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> **Group IV)** Claim 44, drawn to a molecule that is capable of blocking the binding of a molecule that is capable of specifically binding to a peptide, classified in class 530, subclass 350;
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> **Group V)** Claims 45-49, drawn to a method of treating a cancer disease, said method comprising administering to a patient a composition comprising a peptide, classified in class 424, subclass 185.1.
>
> **Group VI)** Claims 45-49, drawn to a method of treating a cancer disease, said method comprising administering a molecule that binds specifically to a peptide, classified in class 424, subclass 138.1; and
>
> **Group V)** Claims 45-49, drawn to a method of treating a cancer disease, said method comprising administering a molecule capable of blocking the binding of a molecule that is capable of specifically binding to a peptide, classified in class 424, subclass 131.1.

The Restriction Requirement also subjected the restricted Groups to a further election of species requirement.

Applicants respectfully disagree with the Restriction Requirement and traverse the Restriction Requirement. However, in order to be fully responsive to the Restriction

Requirement, Applicants provisionally elect with traverse the subject matter of Group I, claims 1-40, drawn to an MHC class I-restricted epitope peptide derived from survivin, composition thereof and kit comprising said peptide, and complex of peptide and HLA class I or fragment thereof, classified in Class 530, subclass 328, Class 424, subclass 185.1, Class 435, subclass 810, and Class 530, subclass 350, respectively.

Furthermore, as noted above, Applicants provisionally elect as the species the Sur93-101/T2 peptide (SEQ ID NO:36) (modified survivin peptide) as a single disclosed species of peptide that binds a specific class I MHC molecule as required by the Restriction Requirement with the election of Group I.

Additionally, Applicants provisionally elect as the second species election the Sur20-28 peptide (SEQ ID NO:14) (peptide contained in native human survivin) as a single disclosed species of second peptide to be used in combination with the first elected species of peptide in one of the compositions of claim 26 or 27, as required by the Restriction Requirement with the election of Group I. As noted above, Sur93-101/T2 (SEQ ID NO:36) is a modified survivin peptide sequence and Sur20-28 (SEQ ID NO:14) is a peptide sequence present in native human survivin. Applicants assume that the species elections are only for purposes of examination and that upon a determination that the elected species are allowable that the Examiner will broaden the search to other species encompassed by the genera of modified and unmodified survivin peptides.

Applicants respectfully traverse the Restriction Requirement on the grounds that Applicants submit that an examination of several of the restricted groups together would not constitute an undue burden. According to the M.P.E.P., when claims can be examined together without undue burden, the USPTO must examine the claims on the merits even if they are directed to independent and distinct inventions. *See* M.P.E.P. § 803 (8th ed., 4th rev.). In establishing that an "undue burden" would exist for co-examination of claims, the USPTO must show that examination of the claims would involve substantially different prior art searches (i.e., that the restricted groups have a separate classification, acquired a separate status in the art when

they are classifiable together, or that searching would require different fields of search), making the co-examination burdensome. *See* M.P.E.P. § 808.02.

Applicants submit that a search for restricted Group I would likely be inclusive of the subject matter of restricted Group II. The restricted Groups I and II share an assignment in the same class, namely Class 435. Furthermore, Applicants submit that most publications directed to the compositions of restricted Group I are likely to discuss methods of using those compositions, such as for example the methods of use encompassed by restricted Group II. Therefore, Applicants submit that a search of the subject matter of restricted Group I with restricted Group II would not be burdensome because a search of restricted Group I would likely be inclusive of restricted Group II.

Similarly, restricted Groups I and V also share an assignment in the same class and subclass, namely Class 424 and subclass 185.1. Applicants likewise submit that most publications directed to the compositions of restricted Group I are likely to discuss methods of using those compositions, such as for example the methods of use encompassed by restricted Group V. Therefore, Applicants submit that a search of the subject matter of restricted Group I with restricted Group V would not be burdensome because a search of restricted Group I would likely be inclusive of restricted Group V.

In addition, Applicants respectfully request that a reasonable number of species be allowed to be examined together in this application, for example peptide sequences related by homology such as SEQ ID NO: 36, SEQ ID NO:27, SEQ ID NO:34 and SEQ ID NO:37 upon a determination that the elected species are patentable.

In view of the above remarks, it is respectfully requested that the Restriction Requirement be reconsidered and withdrawn and that numerous groupings of restricted subject matter be allowed to be prosecuted in the same patent application.

CONCLUSION

An indication of allowance of all claims is respectfully solicited. Early notification of a favorable consideration is respectfully requested.

Respectfully submitted,

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